

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID FUENTES,

Plaintiff,

v.

MR. MANNING, et al.,

Defendants.

No. 2:23-0386 CSK P

ORDER

Plaintiff is a state prisoner proceeding pro se. On December 23, 2024, defendants filed a motion for a forty-five day extension of time to file their motion for summary judgment. (ECF No. 39.) This is defendants' third motion to modify the Discovery and Scheduling Order, but their first motion to extend the pretrial motions deadline and is based on plaintiff's alleged refusal to comply with his discovery obligations. As discussed below, defendants' motion to modify is granted. However, the pretrial motions deadline is vacated rather than extended pending resolution of defendants' motion to compel discovery.

I. BACKGROUND

This action proceeds on plaintiff's second amended complaint against defendants Mr. Manning and Ms. Kissel for their alleged failure to protect plaintiff from harm in violation of the Eighth Amendment. (ECF No. 15.)

On June 11, 2024, the Court issued the Discovery and Scheduling Order, setting the

discovery deadline for October 11, 2024, and the pretrial motions deadline for January 13, 2025. (ECF No. 27.) On August 14, 2024, the Court granted defendants' first request for extension of time to modify the scheduling order and extended the deadline to serve written discovery requests to August 26, 2024, and to file any motions to compel to October 25, 2024. (ECF No. 29.)

On October 2, 2024, the Court granted defendants' second request to modify the scheduling order and extended the discovery deadline to December 10, 2024, for the limited purpose of deposing plaintiff and other nonparties and ordered that any motions necessary to compel discovery related to depositions be filed on or before that date. (ECF No. 32.)

On October 24, 2024, defendants filed a motion to compel discovery. (ECF No. 33.) On October 29, 2024, defendants filed a status update regarding their motion to compel discovery. (ECF No. 35.) Plaintiff did not file an opposition, and on November 20, 2024, the Court ordered plaintiff to file an opposition or statement of no opposition within 21 days. (ECF No. 37.) Plaintiff was cautioned that he is required to cooperate in discovery. (*Id.* at 2.)

Plaintiff did not file an opposition or statement of no opposition, but on December 19, 2024, defendants filed a second status update on their motion to compel discovery after receiving some discovery responses. (ECF No. 38.) On December 23, 2024, defendants filed a motion for a forty-five day extension of time to file their motion for summary judgment. (ECF No. 39.)

## II. GOVERNING STANDARDS

"The district court is given broad discretion in supervising the pretrial phase of litigation." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal quotation marks omitted). Rule 16(b) provides that "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "The schedule may be modified 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson, 975 F.2d at 607).

## III. DISCUSSION

Defendants have shown good cause to extend the pretrial motions deadline. Defendants have been diligent in conducting discovery, including deposing plaintiff and an incarcerated

1 nonparty witness. Although plaintiff has filed nothing with the Court in response to defendants'  
2 motion to compel discovery, plaintiff has submitted some discovery responses to defendants since  
3 the motion to compel discovery was filed. In light of the pendency of the motion to compel, the  
4 pretrial motions deadline is vacated rather than extended and will be reset following resolution of  
5 defendants' motion to compel discovery responses.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Defendants' motion to modify the Discovery and Scheduling Order (ECF No. 39) is  
8 granted.
- 9 2. The pretrial motions deadlines set in the June 11, 2024 order (ECF No. 27) is vacated  
10 pending further order of the Court.

11  
12 Dated: December 26, 2024

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14 CHI SOO KIM  
15 UNITED STATES MAGISTRATE JUDGE

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